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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/791,430
Filing Date: March 01, 2004
Appellant(s): MAGNUSON ET AL.

Carl J. Schwedler
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 08/19/09 appealing from the Office action mailed 11/29/07.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2002/0054491 A1	**CASAS**	**05-2002**
4,335,514	**OVERY et. al.**	**06-1982**
2004/0050188 A1	**RICHARDS et. al.**	**03-2004**
6,443,675 B1	**KOPRAS et al.**	**09-2002**

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

A. Claims 41, 43-44, 46-51 and 54-56 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Casas (2002/0054491 A1) in view of Overy et al. (4,335,514), hereinafter Overy, and in further view of Richards et al. ((2004,0050188), hereinafter Richards. Regarding claim 41, Casas teaches a motor chain saw 4 having a handle or a handguard attached to the housing of the motor chain saw 4. Casas also teaches that the handguard or handle having a front wall and a rear wall and a light source 6. See Fig. 3 and paragraph 19 in Casas. Casas also teaches that the light source 6 is secured to the handguard or handle and is adapted to emanate from the front wall. It should be noted that the light source 6 is a part of the front wall of the handle or handguard.

Casas does not explicitly teach that the handle or handguard is also a brake release handle that operatively is connected to a braking mechanism and the front wall includes a translucent material or plexiglass.

However, Overy teaches that a handguard, similar to the handguard shown in Casas, which is part of a braking mechanism. Overy teaches a braking mechanism 34 that includes a brake lever 36 which is also a handguard 40 and is located in front of a front handle 42. See Figs. 1-5 and col. 2, lines 9-56 in Overy. It should be noted that the brake lever 36 in Overy also includes an upper portion that is handguard 40 and is located in front of the front handle, the same place that the handguard with a light source is located in Casas. Therefore, it would have been obvious to a person of ordinary skill in the art to

use the handguard in Casas' chain saw also as a brake release that is connected to a braking mechanism, as taught by Overy, in order to pivot the handguard and stop the rotation of the saw chain when is desired.

Casas, as modified above, does not explicitly teach that the light source has a cover or a front wall that includes a translucent material or plexiglass. However, the use of translucent material or plexiglass with a light source in tools is well known in the art such as taught in Richards. Richards teaches a light source 30 includes a front wall or a cover 62 that comprises of a translucent or transparent material such as plexiglass, glass, polycarbonate, or another type of translucent or transparent material. It should also be noted that the light source 30 is located within the handle 17, 18. See Figs. 1-3 and paragraph 27 in Richards. It would have been obvious to a person of ordinary skill in the art to provide the light source in Casas' chain saw, as modified by Overy, with the translucent cover or front wall that includes plexiglass, as taught by Richards, in order to cover the light source with translucent or transparent material that emanate the light and protects the light source.

Regarding claims 43-44 and 46 Casas, as modified by Richards, teaches everything noted above including that the front wall is a cover 62 that reversibly is attached to the brake release handle. It should be noted that the cover 62 can be revered and attached to the handle. See Fig. 1 Richards. In addition, in addition to the degree that it could be argued that the cover 62 cannot be revered, an Official Notice is taken that the use of reversible cover for a light source is well known in the art. Casas, as modified by Richards, also teaches that the translucent material 62 is plastic. It should be noted that

the plexiglass is a trademark for thermoplastic poly (methylmethacrylate) type polymers which considered being plastic. See col. 7, lines 25-35 in Budde et al. (4,774,637). Casas, as modified by Richards, also teaches that the translucent material is glass.

Regarding claims 47, 48, and 50, Casas, as modified by Overy, teaches that the light source mounting means or a plate 10 is affixed to the brake release. Casas does not explicitly teach that the plate is located within the brake release handle and is attached to an interior surface of the rear wall. However, Richards teaches that the light source 30 is affixed to a plate attached to a rear wall 56 and is located within the handle. It should be noted that the rear plate that holds LEDs attached to the interior surface of the rear wall 56. It should be also noted that the handle 18 includes an upper portion 17 that also considered being a portion of the handle. See Fig. 3 in Richards. It should have been obvious to a person of ordinary skill in the art to attached the plate of the light source in Casas' chain saw, as modified by Overy, to an interior surface of the rear wall in the handle, as taught by Richards, since the light source works the same whether it is attached to the front wall or the rear wall of the release handle, and in both cases light emanates from the front wall of the handle. There is no criticality in the manner that the light source is attached to the handle. The light source functions in the same manner whether is attached to an interior surface of the rear wall or in front on the front wall.

Regarding claims 54-56, Cases, as modified by Overy, teaches everything noted above except that the brake release handle further includes a switch for activating the light source and the switch is located in the rear wall. However, Richards teaches that a switch 70 attached to the rear wall 17 of the handle for activating the light source. See

Fig. 3 and paragraph 46 in Richards. It should have been obvious to a person of ordinary skill in the art to provide Casas' chain saw, as modified by Overy, with a switch, as taught by Richards, in order to easily access the activation switch of the light source and activate the light source when is needed.

B. Claims 52 and 53 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Casas in view of Overy and Richards, as applied to claim 49, and in further view Of Kopras et al. (6,443,675), hereinafter Kopras. Regarding claims 52 and 53, Casas, as modified above, does not teach explicitly that the light source includes two or more light emitting diodes. However, the use of two or more light emitting diodes to illuminate a front area of a cutting tool is well known in the art such as taught by Kopras. Kopras teaches a hand-held cutting tool 20 including a light source 130 for illuminating the front area of the cutting tool. Kopras also teaches that the light source includes two or more light emitting diodes. See Fig. 11 and col. 18, lines 26-67 in Kopras. It would have been obvious to a person of ordinary skill in the art to provide the light source in Casas' chain saw, as modified above, with light emitting diodes, as taught by Kopras, in order to improve the visibility of the workpiece at the point of a cut being made.

(10) Response to Amendment

Appellant's argument that there is no requirement that the original disclosure detail each and every aspect of the invention is not persuasive. Firstly, the objection to the specification under 35 U.S.C. 132 has to be petitioned rather than being appealed. Secondly, the drawings must show every feature of the invention specified in the claims. In this case, a motor chain saw set forth in claim 41 must be shown. It has been suggested

that the chain saw in Schurr (4,683,660) to be used as an exemplary view of the chain saw that has a light source as described in the instant application. In this case, the brake lever in the instant application could replace the brake lever in Schurr. Appellant's argument that the engineering of a chain saw handle for a particular chain saw is well within the capability of one of ordinary skill in the art is not persuasive. The particular brake release handle of the present invention has not been shown to be operatively attached to a brake mechanism of a chain saw. Appellant claims a chain saw having a braking mechanism operatively attached to a brake release handle. Therefore, the combination of a brake mechanism, a brake release handle and a chain saw must be shown. In addition, the new added Figs. 6 and 7 and its description on paragraphs 18-20 in specification are not supported by the original disclosure. The original disclosure fails to teach the exact location of the brake release handle on a chain saw. The original disclosure fails to teach a chain saw that looks like the chain saw in Figs. 6-7. The original disclosure also fails to teach that the brake release handle is simply connected to the exterior of the housing of the chain saw by a single screw, as shown in Figs. 6-7. It should be noted that a brake release handle should be operatively attached to a brake mechanism within the housing of the chain saw such as shown in Schurr (4,683,660). The original disclosure also does not teach that the light source illuminate the chain saw in a manner as shown in Fig. 6. Fig. 6 shows that the light beams overlapped in a manner that the middle beam project further behind the upper and lower beams in front of the chain saw machine. This has not been disclosed in the original disclosure. Furthermore, it is not clear how the brake lever can function, if securing means or fastening means simply

secures the brake lever to the exterior of the housing. Applicant argued that the original specification teaches that the chain saw in Schurr (4,683,660) is an appropriate example for such a chain saw assembly that could be modified to have a light source. Therefore, it is suggested that the chain saw in Schurr to be used as an exemplary view of the chain saw that has a light source as described in the instant application. In this case, the brake lever in the instant application could replace the brake lever in Schurr.

Appellant's argument that there is no teaching to internalize a light within a brake release handle is not persuasive. Casas does not explicitly teach that the entire light source is located in a cavity in the wall of the handguard or brake release handle in a manner that the cover of the light source or the distal end of the light source is flushed with the external surface of the light source. However, claim 41 merely recites, "the light source is secured within the brake release handle." The claim does not claim internalizing a light within a brake release handle. As stated in the rejection of claims 1, "the light source 6 is part of the front wall of the handle or handguard." In this case, the housing of the light bulb and the cover in front of the light bulb also is considered to be a part of the handguard or the brake release handle. Therefore, the light bulb within the housing is located at least within and the handguard/ brake release handle. In addition, the light source of Casas is located within the handle, since it is located in the middle of the handle or the guard. It should be noted that claims neither recite the shape and structure of the front wall nor the external or internal structure of the brake handle release. Therefore, as stated above, the light source housing could be considered to be a part of the segmented front wall, and a light bulb (which is inherently a light source) is located within the front

wall or the handgaurd/ handle brake release. The light is adapted to emanate from the portion of the front wall that is the housing of the light source 6. In addition, at least a couple of wires extend from the light bulb inside a recess or an aperture in the handle. The wires are also considered to be part of the light source. In this case, the wires, which are a part of the light source, are within the handgaurd or the hand release handle. Casas does not explicitly teach that the portion of the front wall in front of the light within the casing includes a translucent material. However, Richards teaches that the use of translucent material in front of a light or with the front wall of a light source is old and well known in the art. The light source is internalized with the wall of the handle of the tool. Therefore, appellant's assertion that Cases in combination with Overy does not teach a light secured within the brake release handle is incorrect. In addition, internalization of a light source in a handle is old and well known in that art. For example, Didato (5,863,112) which was cited by the Examiner in the Office action mailed on 02/21/07 teaches a light source which is entirely internalized in a brake release handle. Furthermore, as stated above, Richards which is combined with Casas and Overy clearly teaches that the light source is entirely located within a handle 17, 18 and the translucent cover is flushed with the front wall of the housing or the handle 17, 18. In other words, Casas in combination with Overy and Richards teaches that the light bulb or light source is secured entirely within the handle or brake release handle. It should also be noted that a light source entirely internalized within a handle, a light source partially internalized within a handle, or a light source position on a handle are all art-recognized

equivalents which produce the same result. Therefore, it would have been obvious to a person of ordinary skill in the art to substitute one of such light sources by another one.

Appellant's argues "the Casas light source, even if combined with Richards, does not provide any teaching that the brake release handle itself be reengeered [sic], as opposed to the approach adapted by Casas of attaching a light externally to a tool such as a chainsaw." See page 5, lines 19-21 of the appeal brief. It should be noted that claim 1 merely recites, "the light source is secured within the drake release handle." As stated above, Casas by itself teaches that the light bulb or light source is considered to be located within the handguard or the brake release handle, since the housing of the light bulb is considered to be a part of the handguard or brake release handle which surrounds the light bulb or the light source. In addition, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case, Casas' handle could receive the entire light source within a housing, as taught by Richards. Richards teaches a general concept of securing a light source entirely within a handle. However, a person of ordinary skill in the art is familiar with different methods to incorporate a light source within a handle. In this case, as stated above, Richards teaches one of the methods to incorporate a light source within a handle.

In response to appellant's argument that Richards is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Richards reasonably pertinent to the particular technique used in the invention to disposed a light source entirely behind a front wall of a handle.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

(12) Conclusion

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Ghassem Alie/
Primary Examiner, Art Unit 3724

November 18, 2009

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